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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,048	07/23/2003	Ben Saidi	020728	1441

23696   7590   03/05/2009
QUALCOMM INCORPORATED
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EXAMINER
DAFTUAR, SAKET K

ART UNIT	PAPER NUMBER
2451	

NOTIFICATION DATE	DELIVERY MODE
03/05/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Office Action Summary	10/626,048	SAIDI ET AL.
	Examiner	**Art Unit**	
	SAKET K. DAFTUAR	2451	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>05 January 2009</u>.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-25,27,29,31 and 33-36</u> is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-25,27,29,31,33-36</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All b)☐ Some * c)☐ None of:

     1.☐ Certified copies of the priority documents have been received.

     2.☐ Certified copies of the priority documents have been received in Application No. _____.

     3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection.   Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January

5th, 2009 has been entered. Claims 1-25, 27, 29, 31 and 33-36 are presented for the

further examination.

Response to Arguments

2.   Applicant's arguments filed January 5th, 2009 have been fully considered but they

are not persuasive. As per arguments filed on November 26th, 2007, applicant argues

in substance that:

    a.   Yao does not determine evaluating the stream of media to identify the one

    or more silence frames.

        In response to applicant argument a), Yao discloses dropping data frames

    at predetermined time intervals or frames are dropped on a continuous basis and

    briefly discloses that data frames are dropped by processor at a predetermined,

    fixed rate (see column 10, line 55 - column 12, line 50). Yao discloses

    determining communication channel quality and improving channel quality by

    measuring channel error rates, decreasing channel error rate, dropping silence

    frame at predetermined rate, and improving latency. Therefore, evaluating the

stream of media to identify the one or more silence frames (see figure 8-9, see column 16, line 49 – column 18, line 21 evaluating latency to determine the channel quality based on silence frames or erasure frames). The person skilled in the art would recognize improving channel quality and latency would be possible with/by determining number of silence frames and Yao clearly discloses that dropping silence frame at rate of 1 frame dropped per hundred frames (see column 10, line 55 – column 12, line 50). Therefore, applicant arguments that Yao failed to determine whether any given frame is silence frame to determine whether to drop that particular packet are not persuasive.

Specification

3.   The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: evaluating the stream of media to identify the one or more silence frames as recited in claims 1,7,13, and 19.

Claim Rejections - 35 USC § 101

4.   35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5.   Claims 7-12 and 34 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 7-12 and 34 now recites "a computer-readable medium embodying a set of instructions." The claims fail to place the invention squarely within one statutory class of invention.   On paragraphs 0024 -0025 of the instant specification, applicant has provided evidence that applicant intends the "medium" to include signals. As such, the claim is drawn to a form of energy. Energy is not one of the four categories of invention and therefore this claim(s) is/are not statutory. Energy is not a series of steps or acts and thus is not a process. Energy is not a physical article or object and as such is not a machine or manufacture. Energy is not a combination of substances and therefor not a composition of matter.

Claim Rejections - 35 USC § 102

6.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7.   Claims 1-25, 27, 29, 31 and 33-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Yao et al. U.S. Patent Number 6,785,262 B1 (hereinafter Yao).

As per claim 1, Yao discloses requesting a group call at a first communication device (see column 2, lines 58-60; column 7, line 40 – column 8,

line 29; examiner considers wireless communication system of Figure 3 and its request to establish connection as requesting a group call at a first communication device); receiving a stream of media from the first communication device wherein said stream of media comprises of one or more silence frames; (see column 3, lines 20-21; column 8, line 63 – column 9, line 15 and column 12, lines 14- 30; examiner considers receiving data at the receiver as receiving a stream of media from the first communication device wherein said stream of media comprises of one or more silence frames);evaluating the stream of media to identify the one or more silence frames (see figure 8-9, see column 16, line 49 – column 18, line 21 evaluating latency to determine the channel quality based on silence frames or erasure frames); and automatically suppressing the one or more identified silence frames from the received stream of media (see column 3, lines 53-58 ;column 8, line 63 – column 9, line 15 and column 12, lines 14- 30; examiner considers data frames are dropped at a second, higher rate if a processor determines that communication channel latency (inherits silence frame) has increased significantly as automatically suppressing the one or more silence frames from the received stream of media).

As per claim 2, Yao discloses said suppressing includes suppressing an initial silence frame situated before a first media frame (see column 4, lines 8-40, examiner considers data frames are dropped in accordance with the rate at which data frame were encoded and a processor determines communication

channel latency inherently discloses suppressing includes suppressing an initial silence frame situated before a first media frame).

As per claim 3, Yao discloses said suppressing includes suppressing all initial silence frames situated before a first media frame (see column 4, lines 8-40, examiner considers data frames are dropped in accordance with the rate at which data frame were encoded and a processor determines communication channel latency inherently discloses suppressing includes suppressing all initial silence frames situated before a first media frame).

As per claim 4, Yao discloses said suppressing includes suppressing a silence frame situated between two successive media frames (see column 4, lines 8-40, examiner considers data frames are dropped in accordance with the rate at which data frame were encoded and a processor determines communication channel latency inherently discloses suppressing includes suppressing a silence frame situated between two successive media frames).

As per claim 5, Yao discloses said suppressing a silence frame includes suppressing the silence frame that is in access of a predetermined number of silence frames situated between the two successive media frames (see column 4, lines 8-40, examiner considers data frames are dropped in accordance with the rate at which data frame were encoded and a processor determines communication channel latency inherently discloses suppressing a silence frame includes suppressing the silence frame that is in access of a predetermined number of silence frames situated between the two successive media frames).

As per claim 6, Yao discloses said suppressing the silence frame includes suppressing the silence frame that follows a first predetermined number of silence frame following a first media frame and precedes a second predetermined number of silence frame proceeding a media frame subsequent to the first media frame (see column 4, lines 15-25, examiner considers dropping packets based on first predetermined threshold and second predetermined threshold as suppressing the silence frame that follows a first predetermined number of silence frame following a first media frame and precedes a second predetermined number of silence frame proceeding a media frame subsequent to the first media frame).

As per claim 7, Yao discloses requesting a group call at a first communication device (see column 2, lines 58-60; column 7, line 40 – column 8, line 29; examiner considers wireless communication system of Figure 3 and its request to establish connection as requesting a group call at a first communication device); receiving a stream of media from the first communication device wherein said stream of media comprises of one or more silence frames; (see column 3, lines 20-21; column 8, line 63 – column 9, line 15 and column 12, lines 14- 30; examiner considers receiving data at the receiver as receiving a stream of media from the first communication device wherein said stream of media comprises of one or more silence frames); evaluating the stream of media to identify the one or more silence frames (see figure 8-9, see column 16, line 49 – column 18, line 21 evaluating latency to determine the channel quality based

on silence frames or erasure frames); and automatically suppressing the one or more silence frames from the received stream of media (see column 3, lines 53-58 ;column 8, line 63 – column 9, line 15 and column 12, lines 14- 30; examiner considers data frames are dropped at a second, higher rate if a processor determines that communication channel latency (inherits silence frame) has increased significantly as automatically suppressing the one or more silence frames from the received stream of media).

As per claims 8-12, claims 8-12 are computer readable medium of method claims 2-6, respectively. They do not teach or further define the limitations recited in claim 2-6, respectively. Therefore, claims 8-12 are rejected for the same reasons set forth in claim 2-6, supra.

As per claims 13-18, claims 13-18 are an apparatus claim of method claims 1-6, respectively. They do not teach or further define the limitations recited in claim 1-6, respectively. Therefore, claims 13-18 are rejected for the same reasons set forth in claim 1-6, supra.

As per claim 19, Yao discloses a receiver capable of receiving information (see column 3, lines 20-21, examiner considers receiving data at the receiver as a receiver capable of receiving information); a transmitter capable of transmitting information (see column 3, lines 3-4, examiner considers dropping data frames at transmitter as a transmitter capable of transmitting information); and a processor (see column 3, lines 12-15, examiner considers a processor located within a transmitter as a processor capable of carrying out suppressing silence frames in

a stream of media) for evaluating the stream of media to identify the one or more

silence frames (see figure 8-9, see column 16, line 49 – column 18, line 21

evaluating latency to determine the channel quality based on silence frames or

erasure frames) and for automatically suppressing silence frames in a stream of

media, the method comprising: receiving a stream of media from a user (see

column 3, lines 20-21); and the silence frames from the received stream of media

is suppressed (see column 3, lines 53-58, examiner considers data frames are

dropped at a second, higher rate if a processor determines that communication

channel latency (inherits silence frame) has increased significantly as the silence

frames from the received stream of media is suppressed).

As per claims 20-24, claims 20-24 are an apparatus claim of method

claims 2-6, respectively. They do not teach or further define the limitations recited

in claim 2-6, respectively. Therefore, claims 20-24 are rejected for the same

reasons set forth in claim 2-6, supra

As per claim 25, Yao discloses buffering and then forwarding the

suppressed stream of media (see column 12, lines 14 – 29, buffering taking

place at receiver buffer before transmitting the frames based upon receiver buffer

underflow or overflow conditions).

As per claims 27, 29, and 31, claims 27, 29, and 31do not teach or further

define over the limitation as recited in claim 25. Therefore, claims 27, 29, and 31

are rejected under same scopes as discussed in claim 25, supra.

As per claim 33, Yao discloses determining whether the stream of media includes one or more silence frame between successive media frames of the stream of media, each media frame including data; and wherein the one or more silence frames are suppressed based on the determining step (see column 10,line 55 - column 12, line 50).

As per claims 34-36, they do not teach or further define over the limitation as recited in claim 33. Therefore, claim 34-36 are rejected under same scope as discussed in claim 33, supra.

Conclusion

8.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See accompanying P.T.O 892.

a.   A VOICE ACTIVITY DETECTOR FOR PACKET VOICE NETWORK BY WANG US PUBLICATION 2001/0014857 A1.

9.   A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action. Failure to respond within the period for response will result in ABANDONMENT of the applicant (See 35 U.S.C 133, M.P.E.P 710.02,71002 (b)).

Contact Information

10.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAKET K. DAFTUAR whose telephone number is (571)272-8363. The examiner can normally be reached on 7:00 - 3:30pm M-W.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John Follansbee can be reached on 571-272-3964. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. K. D./
Examiner, Art Unit 2451
/John Follansbee/
Supervisory Patent Examiner, Art Unit 2451